



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10167/2017

THE IMMIGRATION ACTS

Heard at Liverpool Civil Justice Centre
On 10th October 2018

Decision & Reasons Promulgated
19th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Bates, Senior Home Office Presenting Officer

For the Respondent: Mr A Khan of Fountain Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against a decision of Judge J J Maxwell (the judge) of the First-tier Tribunal (the FtT) promulgated on 22nd May 2018.
2. The Respondent before the Upper Tribunal was the Appellant before the FtT and I will refer to her as the Claimant.

3. The Claimant is a female Iranian citizen born in August 1995. She claimed asylum on the basis of her political opinion. It was claimed that she would be at risk from the Iranian authorities because she had been a blogger, and had posted derogatory cartoons on a blog, which would put her at risk if she returned to Iran.
4. The claim for international protection was refused on 27th September 2017. The Claimant appealed to the FtT, and the FtT hearing took place on 25th April 2018 and 15th May 2018. On 25th April 2018 the judge heard evidence from the Claimant, and submissions from both representatives and reserved his decision.
5. When considering his decision the judge observed that although neither representative had made any direct reference to the existence of the blog, there was a link to the claimed location of the blog set out in the Claimant's witness statement. The judge tried the link, which led him to a Google page which confirmed the existence of the blog and that the blog site had been closed down. The judge could see that nine blogs had been posted between September 2016 and May 2017.
6. The judge decided that the parties should be given an opportunity to consider the evidence that he had discovered after the hearing. Directions dated 2nd May 2018 were sent out by the Tribunal indicating that the appeal was to stand adjourned part-heard to 15th May 2018. The directions indicated that neither party was required to attend but indicated that the judge had undertaken a search which revealed the existence of the blog, and the commencement and conclusion of the blog, which accorded with the Appellant's account, as did the claimed number of blogs produced. The parties were given the link to the blog and invited to make representations on the evidence discovered by the judge.
7. Unfortunately due to an administrative error, the link to the blog was misspelt, which meant that the parties could not access it. When the hearing reconvened on 15th May 2018 there was no attendance by or on behalf of the Claimant and no representations made on her behalf. A Presenting Officer attended on behalf of the Secretary of State.
8. The Presenting Officer was given the correct link and allowed an opportunity to access the blog. The hearing proceeded with the Presenting Officer making submissions, having viewed the evidence discovered by the judge.
9. The judge has recorded in his record of proceedings that the Presenting Officer submitted that the material did little to advance the Claimant's case, as it amounted to a bare reference to the blog, with no reference to the content, and the dates and numbers given were equivocal.
10. The judge allowed the Claimant's appeal on asylum and human rights grounds, finding at paragraph 34 of his decision, that the Claimant had proved her account to be accurate and reliable. The judge found that "she was a blogger who posted what would be regarded as both derogatory and anti-regime materials by way of cartoons lampooning the Iranian regime and senior clerics."

11. The judge was satisfied having considered background evidence, that the Claimant would be at risk of persecution if she was returned and identified by the Iranian authorities.
12. The Secretary of State applied for permission to appeal to the Upper Tribunal. In summary, it was contended that the judge had materially erred in law and had failed to take into account relevant case law, that being EG (post-hearing internet research) Nigeria [2008] UKAIT 00015. It was pointed out that it was only on the morning of the hearing on 15th May 2018 that the Secretary of State was able to access the link and consider the evidence. It was noted that the judge had not provided any “hard evidence of the appellant’s evidence, only links to a website.”
13. At paragraph 29 the judge had noted that the Claimant had not produced original evidence of the cartoons she claimed to be the source of her problems, but presented freshly-drawn copies, but there was insufficient evidence of this.
14. There was no evidence from Iran to suggest that the Claimant is wanted by the authorities. The judge at paragraph 20 referred to finding a Google page which confirmed the existence of the blog, and that it had been closed down but it was submitted that this was not sufficiently strong evidence such that the claim should be believed. It was submitted that the judge had placed significant weight on the history of a blog which he was not able to view, and the judge had erred by not fully reasoning his findings, “and has allowed this appeal on a very weak point.”
15. Permission to appeal was granted by Judge Boyes of the FtT and I set out below, in part, the grant of permission;
 - “2. The grounds assert that the judge was wrong to conduct his own enquiries and in addition was wrong not to allow the Respondent further time to consider the material.
 3. Having considered that which the judge has concluded in the judgment, I find that the grounds are arguable. The judge perhaps should not have taken matters into his own hands to investigate yet when the hearing recommenced, the parties should have been afforded all of the material the judge had seen and given time to digest and argue it properly. That this did not happen is arguably an error of law.
 4. Permission to appeal is granted.”
16. Following the grant of permission the Claimant lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary, it was contended that the judge had not acted unfairly and the Secretary of State had been given an opportunity to consider the link to the blog and had not requested an adjournment.
17. It was submitted that the judge had made findings open to him on the evidence and given adequate reasons for those findings.

18. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the judge had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

19. I asked the representatives whether there was a hard copy of the evidence discovered by the judge as this was not on the Tribunal file. I noted from paragraph 22 of the FtT decision that the material amounted to “no more than two pages once downloaded.” The representatives indicated that they had not seen a hard copy of the Google page.
20. I firstly heard oral submissions from Mr Bates who relied upon the grounds contained within the application for permission to appeal. Mr Bates submitted that in addition to the issue of unfairness, the judge had erred by not fully reasoning his findings. Mr Bates was in possession of notes made by the Presenting Officer who had appeared before the judge, which indicated that submissions had been made to the effect that the evidence discovered by the judge did not prove the Claimant’s case. It was submitted that the judge had not referred to those submissions in his decision and had erred by not doing so.
21. Mr Bates submitted that in relation to the evidence discovered by the judge, the burden of proof was on the Claimant to establish that such evidence was reliable. It was submitted that the Secretary of State had been disadvantaged by not receiving a hard copy of the evidence discovered by the judge, and by only being able to access the link on the day of the hearing. It was submitted that the lack of reasons given by the judge, meant that the Secretary of State could not understand from the judge’s decision, why the appeal had been allowed.
22. I then heard oral submissions from Mr Khan who relied upon the Rule 24 response. Mr Khan made the point that the Claimant had, in her asylum interview made the Secretary of State aware of the existence of the blog. At paragraph 8 of her witness statement she had provided the link to that blog. It was submitted that the judge had not erred by following that link, and thereafter had given the parties the opportunity to make representations upon the evidence that he had discovered.
23. Mr Khan pointed out that the Secretary of State’s representative at the hearing on 15th May 2008 had not requested an adjournment. I was asked to accept that the judge had not been unfair, and did not have to set out in his decision everything that was said by a representative.
24. It was submitted that the judge had been entitled to find the Claimant credible, and had given adequate reasons for the findings that he had made and the decision disclosed no material error of law.
25. In response Mr Bates submitted that it was unfair of the judge to ignore submissions made by the Presenting Officer at the hearing on 15th May and to attach no weight to those submissions. It was reiterated that the judge had failed to give adequate

reasons for his findings and had acted unfairly in proceeding, as the Secretary of State only had access to the link on the morning of the hearing on 15th May 2018.

26. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

27. I do not find that the judge acted unfairly in considering this appeal, and do not find that he failed to follow the guidance in EG (Nigeria). The headnote to that decision, in summary, states that it is unwise for a judge to conduct post-hearing research on the internet or otherwise, into the factual issues which have to be decided in a case. To derive evidence from post-hearing research on the internet and to base conclusions on that evidence without giving the parties the opportunity to comment on it is wrong.
28. In my view, the judge, having been provided with a link to a blog site, was entitled to investigate that link. Although there had been no direct reference to the existence of the blog, it was central to the Claimant's case. The judge at paragraph 21 sets out his view that having investigated the link, fairness dictated that he should give the parties the opportunity to consider the evidence and to make further representations. He makes specific reference to EG (Nigeria).
29. It is unfortunate that a misspelling of the link in the directions dated 2nd May 2018 meant that the parties could not access the link. The Secretary of State's Presenting Officer attended the hearing on 15th May 2008 and was given the correct link. The Presenting Officer was given an opportunity to consider the evidence that the judge had found and in fact did make submissions on that evidence.
30. If the Secretary of State had been disadvantaged, it was open to the Presenting Officer to make an application for an adjournment. It is common ground that no such application was made. Therefore the judge was entitled to proceed with the hearing, on the understanding that the Presenting Officer was satisfied, having been given an opportunity to consider the evidence. I therefore do not find that the judge failed to follow guidance in EG (Nigeria), and did not act unfairly.
31. It is not an error of law to fail to set out all submissions made by a representative. The judge set out at paragraph 22 that it was only on the morning of the resumed hearing that the Secretary of State's representative was able to properly consider the material, but records that there was no application to adjourn and that further representations were made. It may have been helpful had the judge briefly summarised the submissions to the effect that the Presenting Officer submitted that the evidence did not advance the Claimant's case, but I do not find that it is a material error of law not to do so. The judge needs to demonstrate that he has taken all matters into account and considered the evidence in the round, and in my view the decision promulgated on 22nd May 2018 demonstrates that this is what the judge has done.

32. I find no error of law as contended by the Secretary of State at paragraph 29 of the decision in which the judge finds that the Claimant has not produced the originals of the cartoons she claims to be the source of her problems as these had been seized. Included in the Claimant's bundle are fresh drawings reproducing cartoons that were originally published. It is submitted in the grounds seeking permission to appeal that there is no evidence of this but that is not the case. The judge viewed the drawings, and accepted the Appellant's evidence that the originals had been seized, and these were reproductions drawn by the Claimant. The judge was entitled to reach that conclusion.
33. I find that the claim in the grounds that the Appellant had not adduced sufficiently strongly evidence to prove her claim displays a disagreement with the conclusion reached by the judge but does not disclose a material error of law. The judge at paragraph 20 sets out the evidence that he discovered. He comments that the Google page confirmed that there had been a blog which had been closed down. There were postings indicating a total of nine blogs posted between September 2016 and May 2017. The judge at paragraph 31 attaches significant weight to the history of the blog. He notes that the history of posting accords with the chronology given by the Claimant and was entitled to attach significant weight to this, in my view. As pointed out by the judge, the evidence was not advanced by the Claimant, but resulted from the judge following the link given in her witness statement. In this paragraph the judge specifically records that in coming to that conclusion he has "taken due account of the further representations made on behalf of the Respondent." These are the submissions made by the Presenting Officer on 15th May 2018.
34. In my view the judge has made findings which were open to him to make on the evidence and given adequate reasons for those findings. I conclude that the judge has complied with his duty to give reasons as set out in the headnote to Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) which is set out below;
- "It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."
35. In my view the judge has made it clear in his decision why he found the Appellant to be credible and he has given adequate reasons for those findings.
36. I conclude that the grounds seeking permission to appeal display a disagreement with the decision reached by the judge, but do not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. I do not set aside the decision. The appeal of the Secretary of State is dismissed.

Anonymity

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Claimant or any member of her family. This direction applies both to the Claimant and to the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made because the Claimant has made a claim for international protection and is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

10th October 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

As stated by the FtT, no fee has been paid or is payable and therefore there is no fee award.

Signed

Date

10th October 2018

Deputy Upper Tribunal Judge M A Hall